THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO.32842 of 1998

DATED: 09-04-2007

Between:-

K. Mysaiah

.. Petitioner

and

A.P. Residential Educational Institutions Society, Hyderabad represented by its Secretary and others.

.. Respondents

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO.32842 of 1998

ORDER:

This writ petition is filed seeking a mandamus directing the respondents to regularize the services of the petitioner as Cook taking into account the service from 25.06.1993 till 30.06.1998 in terms of the Judgment of this Court reported in 1998 (2) ALT 5 (SC) by setting aside the proceedings of the 1st respondent, dated 28.05.1998, in Rc.No.439/C2-3/97.

The brief facts of the case are that the petitioner, who belongs to BC-D category, was recruited on 25.06.1993 in the A.P. Residential School for Girls, Vangara, Karimnagar District, on daily wage basis. Initially, he was paid Rs.20/- per day and subsequently the same has been increased to Rs.45/-. He was continuously working from the date of his appointment with artificial breaks. Though he was being paid daily wages, he was discharging all the duties attached to the post of Cook. While so, the respondents sought to fill up the post held by him and also two others posts of Record Assistant and Sweeper on regular basis. The 2nd respondent, by a letter dated 12.10.1992, requisitioned the Employment Exchange to sponsor candidates for appointment to the said posts on regular basis. Thereupon, the petitioner along with one V. Rajeswar Rao and Md. Yakub Bee filed a writ petition, being W.P.No.16476 of 1994, before this Court and this Court, by order dated 23.09.1994 in W.P.M.P.No.20413 of 1994, issued interim direction to

the respondents to permit them to attend the written test and oral interview to be held on 14.09.1993 or on any other subsequent date. On 16.02.1995, interview was conducted for several posts. But, no selection has taken place in respect of the post of Cook held by the petitioner for the reason that apart from the petitioner, only one candidate had appeared for the interview. Therefore, the petitioner was allowed to continue in the said post. After selection, the said Rajeswar Rao and Md.Yakub Bee were appointed as Record Assistant and Sweeper respectively. However, the writ petition filed by them was disposed of on 26.12.1997 directing the respondents to pay annual increments to the 1st and 2nd petitioners if it is so payable according to the rules and regulations of the respondent-organization and the relief claimed by the 3rd petitioner i.e. the petitioner herein is rejected. Consequently, the 2nd respondent informed the petitioner that his services are going to be terminated on 25.03.1998. Aggrieved by the same, he filed W.P.No.8331 of 1998 bringing to the notice of the Court the fact that no selection has taken place in respect of the post held by him and the G.O.Ms.No.212 issued by the Government ordering regularization of all ad hoc/daily wage employees subject to certain terms and conditions. Further, the Supreme Court in its Judgment reported in 1998 (2) ALT 5 (SC) upheld the view taken by this Court that the services of the employees shall be regularized with effect from the date or dates they completed five years' continuous service, on the basis of G.O.Ms.No.212. In view of the same, he is entitled for regularization in terms of the above said G.O. and Judgment. Further, the writ petition filed by him was disposed of on 27.03.1998 with a direction to the respondents to consider his case in terms of G.O.Ms.No.212 dated 22.04.1994. In spite of the same, an order of termination, dated 24.03.1998 was served on him. However, he was allowed to continue in service till 30.06.1998, and thereafter

terminated from service from 01.07.1998, vide proceedings of the 1st respondent, dated 28.05.1998, in Rc.No.439/C2-3/97, wherein it was stated that since he was not in service as on the date of issuance of order by this Court, it was decided not to take him into service and further he was not eligible for regularization of service since he was not having five years of service as on 25.11.1993 and required qualifications to hold the post of a Cook. According to the petitioner, he has five years of continuous service and required qualifications and, hence, eligible to be regularized in the post of Cook. The order issued by the 1st respondent is unjust and arbitrary.

Respondents 1 and 2 filed counter-affidavit denying the material allegations made by the petitioner in his affidavit filed in support of the writ petition.

Heard both sides.

On perusal of the material available on record and on hearing both the learned counsel, it is clear that the petitioner worked for a period of five years only i.e. from 25.06.1993 to 30.06.1998. While issuing Rule nisi, no interim orders were passed by this Court. Having regard to the same, it is clear that the petitioner was out of service all these years and, hence, at this length of time, this Court is not inclined to interfere with the order passed by the 1st respondent.

Accordingly, this writ petition is dismissed. No costs.

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GOPALA KRISHNA TAMADA, J

9th April, 2007
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